



U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 2

Emergency and Remedial Response Division

290 Broadway

New York, NY 10007-1866

MEMORANDUM

DATE: JUN - 4 2018

SUBJECT: Documentation of Concurrence with the Preparation of an Engineering Evaluation/ Cost Analysis in Support of a CERCLA Non-Time Critical Removal Action at the Pierson's Creek Superfund Site in Newark, New Jersey

FROM: Pamela Tames, Remedial Project Manager
Central New York Remediation Section

A handwritten signature in cursive script, appearing to read "Pamela Tames".

THRU: Michael Sivak, Chief
Passaic/Hackensack/Newark Bay Remediation Branch

A handwritten signature in cursive script, appearing to read "Michael Sivak".

TO: John Prince, Acting Director
Emergency and Remedial Response Division

I. PURPOSE

The purpose of this memorandum is to document your concurrence with the preparation of an Engineering Evaluation/Cost Analysis (EE/CA) for a non-time critical removal action (NTCRA) at a portion of the Pierson's Creek Superfund site (Site). The Site, located in Newark, Essex County, New Jersey, is considered a "facility" as defined by Section 101(9) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. § 9601(9). The Site is on the National Priorities List.

Historically, Pierson's Creek originated just north of the Troy Chemical Corporation Inc. (Troy) plant property at the Site and then flowed into a concrete channel that bisected the Troy property. A drainage improvement project that was completed in 2007 altered the flow of Pierson's Creek. The Creek (designated as Operable Unit 1 (OU1)) now begins just south of the Troy property (designated as Operable Unit 2 (OU2)) where it receives stormwater runoff from the Wilson Avenue/ Avenue L drainage culvert as well as from an unnamed tributary on the eastern boundary of the Troy property. The Creek continues to flow through a series of open channels and culverts in a general south-southwesterly direction before discharging into the Port Newark Channel of Newark Bay. The portion of the Creek that flows through the open channel bisects property owned by 429 Delancy Associates, LLC (429 Delancy). Past industrial activities along Pierson's Creek have contaminated it with "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). EPA has initiated a remedial investigation and feasibility study (RI/FS) for OU1. Troy is performing the RI/FS for OU2, pursuant to an October 2017 administrative order

548336



on consent with EPA.

Based on the available information, EPA has determined that releases and threatened releases of hazardous substances have occurred on the 429 Delancy property and that such releases may present an imminent and substantial danger to the public health, welfare or the environment. Therefore, a CERCLA removal action on this property is warranted. The removal action will prevent risks from direct contact with hazardous substances and minimize the potential for the migration of contaminants. EPA has determined that it is appropriate to use removal authority to conduct an interim response action to achieve immediate risk reduction while the RI/FS is completed and the final remedy for OU1 is selected. The NTCRA will address mercury-contaminated sediments that were side-cast alongside Pierson's Creek and that pose a threat to public health, welfare, and the environment. The NTCRA also will minimize contaminant migration to Pierson's Creek. The action taken as a result of the EE/CA will be consistent with the provision in CERCLA Section 104(a)(2) requiring removal actions to "contribute to the efficient performance or any long-term remedial action with respect to the release or threatened release concerned." The final remedy for OU1 will address the sediment within Pierson's Creek and its unnamed tributaries.

II. BACKGROUND

The Troy Chemical Company manufactured chemicals at a plant adjacent to Pierson's Creek from 1956 to 1980. The Troy Chemical Co. facility is located to the north of (but not immediately adjacent to) the property owned by 429 Delancy Associates. In June 1980, New Chemical Corporation purchased Troy Chemical Company. Shortly after the purchase New Chemical Corporation changed its name to Troy Chemical Corporation. The company currently manufactures antimicrobial and antifungal paint additives at that facility. Between 1956 and 1965, the Troy Chemical Company allegedly discharged untreated mercury-containing wastewater into Pierson's Creek. After 1965, the wastewater was treated at the plant to address the mercury prior to its discharge into the creek. In 1976, a wastewater treatment plant was built on the site. In 2001, EPA reached a settlement with Troy Chemical that required the facility to come into compliance with chemical reporting regulations, make improvements to reduce air and water pollution and decrease the amount of chemicals the company uses in its processes. The New Jersey Department of Environmental Protection has also worked to resolve air and water violations resulting from operations at the plant.

Engelhard Corp.'s facility located at 429 Delancy Street refined and manufactured precious metals, electric contacts and thermometals from 1954 to about 1994. Wastes disposed of at the site included acid solutions, heavy metals and trace metals, organics, inorganics and miscellaneous waste material. The methods of disposal included incineration, reprocessing and/or recycling. Wastes were also discharged to Pierson's Creek. BASF, a German chemical manufacturer, bought Engelhard in 2006. The current owner of the property is 429 Delancy, which purchased the property in 2007.

Other nearby facilities may also have discharged hazardous chemicals into the Creek.

An earlier City of Newark flood control project dredged contaminated sediment from Pierson's Creek and placed it on the upland banks of the 429 Delancy property. The proposed EE/CA will focus on these upland areas of the 429 Delancy Street property.

III. THREAT TO PUBLIC HEALTH, WELFARE, AND THE ENVIRONMENT

The mechanism for past releases to the environment appears to have been spills and waste disposal practices of facilities located along the Creek. Storm-induced erosion continues to cause the migration of wastes to nearby surface water bodies including Newark Bay.

Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 provides factors for determining the appropriateness of a removal action. The factors most applicable to Site conditions include:

- Actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances or pollutants or contaminants. 40 C.F.R. 300.415 (b)(2)(i);
- High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate. 40 C.F.R. 300.415(b)(2)(iv);
- Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released. 40 C.F.R. 300.415(b)(2)(v);
- There are no other appropriate federal or state response mechanisms currently available to respond to the release. 40 C.F.R. 300.415(b)(2)(vii); and
- Other situations or factors that may pose threats to public health or welfare of the United States or the environment, such as the risks to construction workers or other persons discussed immediately below. 40 C.F.R. 300.415(b)(2)(viii)

429 Delancy Associates plans to redevelop the 429 Delancy property. Without a response action, there will be a health risk to construction workers and those persons that work near that site. Future releases to the environment could occur through air and surface water migration pathways during construction work.

IV. ENFORCEMENT

Based upon their response to an information request letter sent on September 2, 2015, 429 Delancy alleged that it is a bona fide prospective purchaser of its property. On December 21, 2017, EPA issued 429 Delancy a comfort letter describing reasonable steps to take on its property and identified certain statutory protections under CERCLA. The company has expressed an interest in preparing an EE/CA and performing a non-time-critical removal action on its property. EPA will negotiate the performance of the EE/CA with the company and will oversee the work.

V. PROJECT COSTS


It is anticipated that the EPA will enter into a Settlement Agreement and Order on Consent (AOC) with 429 Delancy to prepare an EE/CA for its property. It is anticipated that the EPA will issue Action Memoranda and the 429 Delancy will perform the removal action pursuant to the AOC.

The potential removal response action for the 429 Delancy property includes excavation and capping of contaminated soil/sediment at an estimated cost of \$1 million. EPA oversight costs are estimated to be less than \$75,000.

VI. RECOMMENDATION

Investigations have determined that there has been a release of hazardous substances to the environment at the Site, and a CERCLA Non-Time Critical Removal Action is needed to prevent a direct contact threat and to minimize the potential for the migration of contaminants. Such response actions are considered non-time critical because, although there is a threat to public health, welfare, or the environment, there is sufficient planning time available before the removal actions are to be initiated. Specifically, because of the availability of a planning and design period of at least six months prior to the commencement of the removal action activities at this site, an EE/CA is appropriate to analyze various removal alternatives. We expect the EE/CA to be prepared by 429 Delancy, under EPA oversight, in conformance with the guidelines in *Guidance on Conducting Non-Time-Critical Removal Actions under CERCLA* (EPA/450-R-93-057, August 1993).

I recommend that you approve the preparation of an EE/CA for a NTCRA at the Pierson's Creek Superfund Site, per the current delegation of authority,¹ by signing below.

Approved: 
John Prince, Acting Director
Emergency and Remedial Response Division

Date: June 4, 2018

¹ CERCLA Delegation of Authority 14-2, as redelegated by Regional Order R-1200 (January 19, 2017).